

APPENDIX D TO DIR CONTRACT NO. DIR SDD 1918
Foundation Agreement
US Public Sector (Direct)

1. INTRODUCTION

- 1.1 This Foundation Agreement ("Foundation Agreement") between CA, Inc., located at One CA Plaza, Islandia, New York 11749, ("CA"), and Customer, located at Customer address, ("Customer"), is effective [insert date] . This Agreement and DIR Contract No. DIR SDD 1918 sets forth the terms and conditions under which Customer may license certain programs and maintenance support services pursuant to separately executed Transaction Documents (the "Transaction Documents") and as further defined in the applicable Modules.
- 1.2 The Foundation Agreement may incorporate any Module that is attached hereto or signed separately by the Parties.
- 1.3 Modules attached to this Foundation Agreement as are as follows: Exhibit 1: The Software Module and Exhibit 2: The Services Module

2. DEFINITION

- 2.1 "Affiliate" with respect to Customer means any legal entity in which the Customer directly or indirectly Controls.
- 2.2 "Agreement" means this Foundation Agreement, the applicable Module and applicable Transaction Document, and any document incorporated expressly therein by reference.
- 2.3 "CA Offering" means the individual offering (such as software, services, software as a service etc.) made available by CA as defined in the Module and/or Transaction Document.
- 2.4 "Confidential Information" Confidentiality shall be in accordance with Section 9.H. of Appendix A of the DIR Contract No. DIR-SDD-1918.
- 2.5 "Control" means ownership or control of greater than 50% of an entity's shares or control the board of such entity by force of law or contract, or the equivalent.
- 2.6 "Customer" means any State of Texas agency, unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, and those state agencies purchasing from a DIR contract as outlined in Attachment A Standard Terms and Conditions for Product and Related Services Contracts. Notwithstanding the foregoing, this contract is not to be used for other states but limited to State of Texas.
- 2.7 "Documentation" means the documentation, technical product specifications and/or user manuals, published by CA or any entity within CA group of companies (each a CA entity) that is made generally available with CA Offerings.
- 2.8 "Module" means the additional terms and conditions applicable to the CA Offering.
- 2.9 "Parties" means individually and or collectively CA and or the Customer.
- 2.10 Special Program Documentation ("SPD"). CA's Software specifications and specified operating environment information, which may be found in Documentation accompanying the CA Transaction Document "Term" means, with respect to each Transaction Document, the period during which the CA Offering is provided, licensed or granted.
- 2.11 "Transaction Document" means a signed mutually agreed ordering document such as a CA order form or statement of work, or in the alternative, may be a Customer-issued purchase order, referencing a CA order form, quote/proposal, or statement of work for the specific CA offering licensed or purchased.

3. ORDERING AND DELIVERY

- 3.1 Under the terms of this Agreement, Customer may purchase and CA shall provide the specific CA Offering in a Module signed by the Parties.
- 3.2 Any terms that may appear on a Customer's purchase order which purport to add to or otherwise vary from the referenced CA quote or proposal, that vary from the Agreement (including, without limitation, pre-printed terms) shall not apply and shall be deemed null and void unless explicitly required by law.
- 3.3 Per Section 4.B. 3) of Appendix A of the DIR Contract No. DIR-SDD-1918, acceptance criteria and delivery will be determined on a Transaction Document for each order.
- 3.4

4. CONFIDENTIAL INFORMATION shall be in accordance with Section 9.H. of Appendix A of the DIR Contract No. DIR-SDD-1918.

5. FEES

All fees and expenses shall be paid in accordance with Section 7.C. of Appendix A of the DIR Contract No. DIR-SDD-1918.

6. TITLE

- 6.1 CA retains all right, title, copyright, patent, trademark, trade secret and all other proprietary interests to all CA Offerings and any derivatives thereof. No title, copyright, patent, trademark, trade secret or other right of intellectual property not expressly granted under the Agreement is exchanged between the Parties.

7. WARRANTY

- 7.1 Each Party represents and warrants that it has the legal power to enter into the Agreement.
- 7.2 CA represents and warrants that it owns or otherwise has sufficient rights to grant Customer the rights defined in any Transaction Document during the Term.

8. INDEMNIFICATION shall be in accordance with Section 9.A of Appendix A of DIR Contract No. DIR-SDD-1918.

9. LIMITATION OF LIABILITY shall be in accordance with Section 9.K. of Appendix A of the DIR Contract No. DIR-SDD-1918

10. TERM & TERMINATION

Termination shall be in accordance with Section 10.B of Appendix A of the DIR Contract No. DIR-SDD-1918.

11. DISPUTE RESOLUTION

Dispute Resolution shall be in accordance with Section 10.A of Appendix A of the DIR Contract No. DIR-SDD-1918.

12. GENERAL TERMS

12.1 **Amendments.** The terms of the Agreement may only be amended by mutual written agreement of the Parties.

12.2 **Force Majeure.** Force Majeure shall be in accordance with Section 10.C. of Appendix A of the DIR Contract No. DIR-SDD-1918

12.3 **Customer Data.** If Customer transfers any personal data to CA as a requirement pursuant to any CA Offering, then Customer represents that (i) it is duly authorized to provide personal data to CA and it does so lawfully in compliance with relevant legislation, (ii) CA and any entity within the CA group of companies (each a "CA entity") or its subcontractors can process such data for the purposes of performing its obligations and (iii) CA may disclose such data to any CA entity and its subcontractors for this purpose and may transfer such data to countries outside of the country of origin. CA, Inc. is Safe Harbour certified and the CA Entities have committed to comply with relevant data protection/privacy legislation.

12.4 **Import/Export.** Customer agrees that CA Offerings, Documentation, and or Confidential Information is subject to export controls of the United States of America and import controls of any other country in which such information may be used. Customer agrees to export, re-export or import such information only in compliance with such laws and controls.

12.5 **Counterparts.** This Foundation Agreement, any Module and any Transaction Document as applicable may be signed in any number of counterparts and each part shall be considered part of the whole and valid, legally binding document.

12.6 **Notice.** All notices hereunder shall be in accordance with Section 11 of Appendix A of the DIR Contract No. DIR-SDD-1918.

12.7 **Validity.** In the event any term or provision of the Agreement shall be held to be invalid, the same shall not affect in any respect whatsoever the validity of the remainder of the Agreement.

12.8 **Survival.** Sections pertaining to Title, and Import/Export shall survive termination of this Foundation Agreement.

12.9 **Entire Agreement.**

The laws of the State of Texas (excluding its conflict of laws provisions) shall govern this Agreement. The parties agree that any action arising under or relating to this Agreement shall lie within the exclusive venue of the State Courts located in Travis County, State of Texas. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement. This Agreement, DIR Contract No. DIR-SDD-1918, and any Transaction Document as referenced herein shall comprise the entire Agreement as pertaining to the subject matter herein. In the event of a conflict, the DIR Contract controls. Each Transaction Document shall by reference merge and incorporate the terms and conditions expressed in this Agreement. Each Transaction Document shall constitute a separate and distinct contractual obligation. CA and Customer agree that all other agreements, proposals, purchase orders, representations and other understandings, whether oral or written, relating to the subject matter herein are superseded in their entirety by this Agreement. In no event shall CA's acknowledgement, confirmation or fulfillment of such order, either in writing or by the shipment of Licensed Programs or performance of Services, constitute or imply CA's acceptance of any terms or conditions contained on any Customer form. No alteration or modification of this Agreement will be valid unless made in writing and signed by the parties. In the event of a conflict between the Agreement and any terms and conditions in any Transaction Document, the Transaction Document will control. In the event of a conflict between this Agreement and the DIR Contract No. DIR-SDD-1918, the DIR Contract controls. Nothing herein shall be construed to waive the sovereign immunity of the State of Texas.



12.10 **Signature.** The Parties have caused this Foundation Agreement to be executed by their duly authorized representatives as identified below.

Customer

Signature: _____

Name: _____

Title: _____

Date: _____

CA, Inc.

Signature: _____

Name: _____

Title: _____

Date: _____